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MUNICIPAL COURT—MAY ESTABLISH BY RULE, SCHEDULE OF FEES AND COSTS—TO BE TAXED IN ACTION OR PROCEEDING—SHALL NOT EXCEED FEES AND COSTS LEGALLY PROVIDED FOR SIMILAR ACTIONS OR PROCEEDINGS IN COURT OF COMMON PLEAS—SECTION 1901.26 RC—MUNICIPAL COURT NOT BOUND BY PROVISIONS OF SECTION 1911.39 RC, WHICH RELATES TO PROCEEDINGS BEFORE JUSTICE OF PEACE—APPLICATION OF THAT SECTION LIMITED TO ACTIONS BEFORE JUSTICE OF PEACE.

SYLLABUS:

1. Under the provisions of Section 1901.26, Revised Code, a municipal court, by rule, may establish a schedule of fees and costs to be taxed in any action or proceeding, including attachment, garnishment or in aid of execution, which shall not exceed the fees and costs provided by law for similar actions or proceedings in the court of common pleas, and such municipal court is not bound in any way by the provisions of Section 1911.39, Revised Code, relating to proceedings before justices of the peace.

2. The wording of Section 1911.39, Revised Code, has the effect of limiting the application of that section, formerly Section 10271, General Code, to actions before a justice of the peace.

Columbus, Ohio, April 20, 1954

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your communication, requesting my opinion, and reading as follows:

“It appears that the Bureau of Code Revision, in the process of recodifying Section 10271 G. C. (now Section 1911.39 R. C.) added the following words at the beginning of this section:

‘In an action before a justice of the peace’; further on in the section, the words ‘justice of the peace’ have been inserted in place of the word ‘court’.

“The effect of these changes in this section of the Revised Code seems to be to limit the application of this section to ‘actions before a justice of the peace’.

"We note that the Attorney General, in years past, has ruled, in effect, that \$2.50 is the maximum amount that can be taxed as costs in a suit, attachment, or proceeding in aid of execution brought to enforce payment of such judgment.

"The latest Opinion on this subject is No. 2979, rendered on August 27, 1953, which is before the effective date of the Revised Code.

"It will be noted that Section 1901.26 of the Municipal Court Act provides that the municipal court, by rule, may establish a schedule of fees and costs to be taxed in any action or proceeding, either civil or criminal, which shall not exceed the fees and costs provided by law for a similar action or proceeding in the Court of Common Pleas.

"The questions that arise are these:

"(1) Can the Municipal Court in any city tax costs in excess of \$2.50 in a suit, attachment, or proceedings in aid of execution brought to enforce payment of such judgment?"

"(2) Does the change in the wording of Section 1911.39 Revised Code have the effect of limiting the application of the provisions of this section to 'actions before a justice of the peace?'"

Chapter 2329, Revised Code, relates to the subject of "Execution against Property." Included in this chapter is Section 2329.62 et seq. Revised Code, which deal with exemptions from attachment. Section 2329.62 grants certain exemptions from execution or attachment to every unmarried person, including among others:

"(C) Personal earnings of the debtor for services rendered within thirty days before the issuing of an attachment or other process, the rendition of a judgment, or the making of an order, under which the attempt may be made to subject such earnings to the payment of a debt, damage, fine, or amercement, in an amount up to but not in excess of thirty dollars."

Section 2329.66, Revised Code, deals with exemption from execution or attachment of property belonging to a person who is the chief support of a family. Included in these exemptions is the following:

"(F) Eighty per cent of the first two hundred dollars and sixty per cent of the balance of the personal earnings of the debtor for services rendered within thirty days before the issuing of an attachment or other process, the rendition of a judgment, or the making of an order, under which the attempt is made to subject

such earnings to the payment of a debt, damage, fine, or amercement, but in no event shall the amount of such personal earnings exempt be less than sixty dollars;”

Section 1911.39, Revised Code, to which you refer, was numbered Section 10271 in the General Code. This section had its origin in an Act of the Legislature found in 51 Ohio Laws, page 179, which was entitled an “Act of the Jurisdiction and Procedure before Justices of the Peace, and of the Duties of Constables in Civil Cases.”

This act underwent a number of amendments in which references are made to the payment “to the constable having the order of attachment” of money in the hands of a garnishee, belonging to the debtor.

In the codification of the Revised Statutes, the section was carried in the Title and Chapter relating to “Proceedings before Justices of the Peace.” In the codification of the General Code in 1910 it appeared as a part of Title II, “Procedure in Justices Court.” In the codification of the Revised Code it is found in Chapter 1911 of Title 19, the chapter being headed “Justices of the Peace Procedure.”

Prior to the codification in the Revised Code, Section 10271, General Code, read in part as follows:

“The personal earnings exempted by law shall be liable to the plaintiff for the actual costs of any proceedings brought to recover a judgment for work and labor, or necessities, and for any proceedings to satisfy said judgment in any sum not to exceed two dollars and the necessary garnishee fee for each suit, attachment, aid of execution or other proceeding. * * *”

There followed the provision limiting to two dollars plus a garnishee fee of fifty cents, the amount of costs that could be charged for “each suit, attachment, aid of execution or other proceeding.” In the Revised Code, the section became Section 1911.39, and was made to read as follows:

*“In an action before a justice of the peace, the personal earnings of the debtor exempted by law are subject to be paid to the plaintiff for the actual costs of any proceedings brought to recover a judgment for work and labor, or necessities, and for any proceedings to satisfy said judgment in any sum not to exceed two dollars, and the necessary garnishee fee for each suit, attachment, aid of execution, or other proceedings. * * *”* (Emphasis added.)

It will be noted that the principal change is the addition of the opening words, "in an action before a justice of the peace." Your inquiry suggests that this is a departure from the former provision of the law, and would have the effect of limiting the provisions of this section to actions before a justice of the peace. In view of the history of the section which I have above set forth, it seems very plain that the section from the beginning, through its several amendments was in its terms limited to actions before a justice of the peace, and did not apply to proceedings in any other court, unless expressly adopted by some other provision of the statutes. It was manifestly designed to protect debtors against whom petty actions are frequently filed in the justice's court, from having their wages eaten up by heavy cost bills either in the original action or in subsequent proceedings brought to enforce payment of a judgment.

Prior to the adoption of the new Municipal Court Act of 1951, there were a considerable number of special acts establishing municipal courts in various cities and counties of the state, and there was a decided lack of uniformity as to their jurisdiction and procedure. In some municipal courts the statutes as to costs in a justice's court were incorporated by reference. In other cases costs were established by rule of court.

It appears therefore probable that the General Assembly, recognizing that the provisions of Section 1911.39 supra were limited to justices of the peace, where in its original form, as Section 10271, General Code, it had from the beginning belonged, saw fit to inject into the provisions of the new section the language to which I have called attention; to wit, "in an action before a justice of the peace." Whatever the reason, there seems to be no question but that this statute as it now reads, is limited in its scope to actions before a justice of the peace.

In taking this action, the General Assembly may be presumed to have had in mind the provision which it had placed in the new Municipal Court Law, to wit, Section 1605, General Code, now Section 1901.26, Revised Code, which reads as follows:

"Costs in a municipal court shall be fixed and taxed as follows:

"(A) The municipal court, by rule, may establish a schedule of fees and costs to be taxed *in any action or proceeding*, either civil or criminal, which shall not exceed the fees and costs pro-

vided by law for a similar action or proceeding in the court of common pleas. (Emphasis added.)

This section gives the municipal courts clear authority to establish a schedule of fees and costs for any action, including attachment, provided that the same shall not exceed the fees and costs allowed by law in a similar action or proceeding in the Court of Common Pleas. If municipal courts had ever been bound by the provisions of Section 10271 supra, they are now freed from its limitations.

Provisions relating to attachment, generally, which govern the court of Common Pleas, are found in Chapter 2715, Revised Code. Section 2715.01 sets forth the grounds upon which an attachment may be had, which differ very slightly from the grounds for attachment in an action before a justice of the peace as set forth in Section 1911.21, Revised Code. I do not find in the statutes relating to attachment proceedings in the Court of Common Pleas, any provisions limiting the fees and costs in such actions, and accordingly they appear to be governed by the various provisions scattered through the statutes as to fees and costs growing out of the various steps in litigation.

Accordingly, in specific answer to the questions submitted, it is my opinion and you are advised:

1. Under the provisions of Section 1901.26, Revised Code, a municipal court by rule, may establish a schedule of fees and costs to be taxed in any action or proceeding, including attachment, garnishment or in aid of execution, which shall not exceed the fees and costs provided by law for similar actions or proceedings in the Court of Common Pleas, and such municipal court is not bound in any way by the provisions of Section 1911.39, Revised Code, relating to proceedings before justices of the peace.

2. The wording of Section 1911.39, Revised Code, has the effect of limiting the application of that section, formerly Section 10271, General Code, to actions before a justice of the peace.

Respectfully,

C. WILLIAM O'NEILL
Attorney General